

Statement of
The Honorable James L. Oberstar
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on
“Railroad-Owned Solid Waste Transload Facilities”
October 16, 2007

Rail is an important transportation mode for the solid waste industry. As landfill space becomes more expensive and fuel costs increase, it is expected that rail's importance will only increase for the industry. However, there is growing concern that some in the solid waste industry are trying to extend the laws establishing Federal preemption for rail transportation so that preemption would cover the operation of facilities for processing municipal solid waste. This extension could exempt the processing operations from important state and local environmental health and safety protections.

As an example, in 2003, New England Transrail (NET) filed a petition with the Surface Transportation Board (STB or Board) “to commence the operation of common carrier rail service” and to construct a “bulk and container rail reload center.” NET did not own or control any track, terminal, or rail cars at the time of the application. NET was proposing to build and operate a large solid waste processing facility on an existing Superfund site approximately 12 miles outside Boston, Massachusetts. Although the STB dismissed NET's original petition, the Board seemed to do a complete reversal when it decided this past June that NET's waste processing operations were integrally related to rail transportation, and that therefore preemption would apply and NET could process waste without having to comply with some important state and local environmental health and safety protections.

I do not believe that Congress had this in mind when we passed the Interstate Commerce Commission Termination Act of 1995, which preempted rail transportation from state laws which could create a patchwork of local regulations interfering with the free flow of commerce. Preemption was not intended to apply to industrial operations which preceded transportation by rail. Communities should not be deprived of environmental health and safety protections against the adverse effects of waste processing operations.

I am concerned that the STB's recent decision could set a precedent that will mean the long-term erosion of state and locally-established environmental health and safety regulations. I am pleased that we will be hearing from a number of Members of Congress who share these concerns, including Congressman Pallone who had originally brought this issue to my attention and requested this hearing. Mr. Pallone recently introduced H.R. 1248, the Clean Railroads Act, which would exclude solid waste disposal facilities from the jurisdiction of the STB. I am grateful for Mr. Pallone's leadership on this issue, and I look forward to working with him and others as we consider this important issue.